

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF SNOHOMISH)
SAND AND GRAVEL, INC.,)
Appellant,)
vs.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB NO. 43

FINDINGS OF FACT,
CONCLUSIONS AND DECISION

The appellant, Snohomish Sand & Gravel, Inc., appeals from a condition made a part of its Waste Discharge Permit No. 3594, issued by the Department of Ecology. From facts stipulated and the testimony taken at the formal hearing on May 27, 1971, the Pollution Control Hearings Board makes the following

FINDINGS OF FACT

1. The Pilchuck River is a nonmeandered stream, flowing through land owned by the appellant, Snohomish Sand & Gravel, Inc. At a place on its property, about a mile from where the Pilchuck flows into the Snohomish River, the appellant, by a drag-line operation, removes gravel from the Pilchuck, limited to the period between June 1 and September 15, these being dates agreed upon with the Department of Fisheries and the Department of Game. A hydraulic approval is necessary, pursuant to RCW 75.20.100.

2. This gravel is processed through a washing plant and stockpiled on the appellant's property. This, or similar

operations, have continued since 1919, the gravel supply being replenished by annual fresnets in the river.

3. Pursuant to RCW 90.48.160 and RCW 90.48.170, appellant applied for a waste discharge permit in connection with 1971 operations.

4. Respondent issued Waste Discharge Permit No. 3594, specifying certain conditions, with all of which except No. 5 the appellant is able and willing to comply. That condition is:

The permittee shall not at any time remove aggregate from within the wetted perimeter of any state water-course where such activity would be in violation of existing water quality standards for Intrastate Class A waters.

5. All gravel wash water and truck-washing water goes through a settling pond prior to being discharged into the river; however, it is impossible to conduct the dragline operation in the river without creating a turbidity in excess of water quality standards for Intrastate Class A Waters. The turbidity is quickly dissipated, usually within half a mile of the dragline operation.

No other method of operation is practical or feasible, and the gravel removal operation cannot be carried on and comply with condition No. 5.

From these Facts, the Pollution Control Hearings Board reaches the following

CONCLUSION

That condition No. 5 was not properly included in this waste discharge permit.

Based on these Findings and Conclusion, the Board makes the following

DECISION AND ORDER

The respondent Department's position is that condition No. 5 is merely a statement of the law relative to excessive turbidity, inserted as a reminder that it has to be obeyed. This bland explanation that the condition is but a statement of the law does not justify its inclusion as a condition in the permit.

If the appellant accepts condition No. 5, the permit can be withdrawn by the respondent as soon as the inevitable turbidity occurs because there would have been a violation of a condition in the permit accepted by the permittee. Without such a condition in the permit, the respondent, if it attempts to stop the appellant's operation by penalties or injunctions, must accord the appellant a day in court to show, if it can, that the turbidity caused by its operations is inconsequential, and injures neither fish nor men, and to urge that the regulation of turbidity must take into account the factor of the industrial development of the state.

The declaration of public policy cited by the respondent states it to be the public policy of the state to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and enjoyment thereof, the propagation and protection of wildlife, birds, game, fish and other aquatic life, and the industrial development of the state. (RCW 90.48.010).

The appellant has established that it cannot comply with condition No. 5 and operate its business. The record does not disclose that appellant's operation interferes with public health and enjoyment or with propagation and protection of wildlife, birds, game, fish or other aquatic life, and affirmatively establishes that it is consistent with the industrial development of the state within the purview of RCW 90.48.

Having so decided, it is unnecessary to rule or comment on other agreements raised in support of the result herein reached.

It is therefore Ordered that condition No. 5 be stricken from the permit.

DONE at Olympia, Washington this day of July, 1971.

POLLUTION CONTROL HEARINGS BOARD

Matthew W. Hill
Matthew W. Hill, Chairman

James T. Sneehey, Member

Walt Woodward, Member